



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	Primary Action: 9 VAC 25-720 Secondary Action: 9 VAC 25-420, 430, 440, 450, 452, 460, 470, 480, 490, 500, 510, 520, 530, 540, 550, 560, 570 and 572
<b>Regulation Title:</b>	Primary Action: Virginia Total Maximum Daily Load (TMDL) Regulation for Water Quality Management Planning Secondary Action: Water Quality Management Plans (WQMP)
<b>Action Title:</b>	<u>Primary Action:</u> Adoption of the Virginia (TMDL) Planning Regulation <u>Secondary Action:</u> Repeal of Existing Water Quality Management Plans (WQMPs)
<b>Date:</b>	August 18, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose\*

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The proposed primary action is to adopt a Virginia TMDL regulation for Water Quality Management Planning. A TMDL is the total amount of pollutant load that can be discharged into a stream segment without violating state water quality standards. TMDL is the sum of waste load allocation (WLA) from point sources, pollutant load allocation (LA) from nonpoint sources, and a margin of safety (MOS), or the amount of pollutant that is not allocated to account for estimation errors during derivation of WLA and LA. TMDLs are used to direct efforts at restoring and protecting water quality.

It is envisioned that the proposed TMDL Planning regulation will include, among other possible planning items, the public participation process for TMDL development, procedures for submittal of proposed TMDLs to the Environmental Protection Agency (EPA) for approval, subsequent adoption of the TMDL by the State Water Control Board (Board), and inclusion of TMDLs and TMDL implementation plans into the WQMPs.

The secondary proposed action is the repeal of the existing WQMPs. These plans are basinwide or areawide waste treatment or pollution control management plans developed in accordance with sections 208 and 303(e) of the Clean Water Act (CWA), as implemented by 40 CFR 130. These plans identify water quality problems, consider alternative solutions and recommend pollution control measures needed to attain or maintain water quality standards. The control measures are implemented through the issuance of Virginia Pollutant Discharge Elimination System (VPDES) permits for point source discharges and through regulatory or voluntary measures for nonpoint source pollution control. The majority of the existing regulatory plans are obsolete because plan recommendations have been implemented. They continue to be carried on the books of the Virginia Registrar of Regulations. The repeal of these plans will clear the Registrar's books of unnecessary and outdated regulations and will eliminate the potential for inconsistencies with TMDLs as they are developed from more current information and collaborative input from stakeholders.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

Virginia Code, Sections 62.1-44.15 (10), 62.1-44.15(13) and 62.1-44.19:7 give the State Water Control Board the duty and authority to adopt TMDLs and to establish policies and programs for effective area-wide and basin-wide water quality control and management. The Code also authorizes the Board to develop pollution abatement and water quality control plans.

Water Quality Management Plans are required by Section 303(e) of the Clean Water Act [33 U.S.C. 1313(e)] as implemented by 40 CFR 130. Federal law does not require that water quality management plans be adopted as regulation. However, the state Attorney General's Office made the determination that the plans were regulations because they contained TMDLs and waste load allocations that are eventually incorporated into VPDES permits. Because of this, each water quality management plan was codified.

The Board intends to adopt a TMDL regulation to separate the regulatory component of the WQMP from the nonregulatory component. At the same time, the Board proposes to repeal all existing WQMPs since they will no longer contain rules or regulations as defined in the Virginia Administrative Process Act.

Note: The full texts of the legal authorities can be found at the following web site addresses:

<http://www.vipnet.org/vipnet/government/code-of-virginia.html>  
<http://www4.law.cornell.edu/uscode/33/1251.html>

### Need\*

*Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

Planning for the management of the quality of the waters of the Commonwealth is essential to protect the health, safety, and welfare of the citizens of Virginia. Water quality management plans identify water quality problems and propose alternative solutions and recommendations for pollution control measures needed to attain or maintain water quality standards.

Federal and state regulations require that VPDES permits be consistent with the applicable WQMPs. The plans, however, also allow for revisions in permit requirements as a result of availability of more data and more sophisticated methods of analyses. Application of newer methods, coupled with more data, usually result in permit limitations that are different from those listed in the plans. Consequently, any changes in a VPDES permit that will cause it to be inconsistent with the plan will require amendment of the plan. Separating the regulatory TMDL from the WQMP will allow processing of plan amendments in the same time frame as permit amendment or issuance, resulting in administrative and cost efficiencies.

### Substance\*

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.*

There are currently 18 WQMPs that have been adopted as regulations by the Board during the 1970's through the early 1990's. The plans identify water quality problems, consider alternative solutions and recommend pollution control measures needed to attain or maintain water quality standards.

Most of these existing WQMPs no longer reflect current conditions and need to be updated. The office of the Attorney General has ruled that because the plans contain TMDLs and their associated waste load allocations were incorporated into the VPDES permits, the plans were regulations.

Federal and state laws and regulations require the development of WQMPs; however, there is no requirement that they be regulatory. The proposal to adopt a TMDL regulation and repeal the regulatory WQMPs will provide efficiencies in the management of water quality programs in Virginia.

The existing WQMPs that will be repealed as regulations will continue to guide the Board's water quality management planning activities until updated plans are completed and approved by the Board. The Board staff will solicit public input as the replacement plans are developed.

### Alternatives\*

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.*

The total maximum daily load is considered to be the regulatory component of the existing WQMPs. The preferred alternative to meet the need of bringing impaired waters up to water quality standards is to: (1) adopt a TMDL regulation for Water Quality Management Planning and (2) repeal and update the existing WQMPs. The waste load allocation component of the TMDL, which controls the discharge of pollutants from point sources, will continue to be implemented through the VPDES permit program. Where applicable, regulatory load allocations will be implemented through existing state regulations (e.g., erosion control regulations). Nonregulatory load allocation will continue to be implemented through best management practices and other management strategies for controlling nonpoint sources of pollution.

One alternative that had been considered was the development of a Water Quality Management Plan Framework Regulation that will govern the development and update of WQMPs. This alternative was rejected because federal regulation already exists on specific requirements on how to develop and update WQMPs. It is thought that this is duplicative and could complicate the process of water quality management in Virginia.

Another alternative to repealing the water quality management plans is to do nothing and amend the plans as needed (through the APA process) to accommodate changes in the VPDES permits. Still another alternative is to update each individual plan and maintain them as regulations.

### Public Participation\*

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.*

The Board is seeking comments on the intended regulatory action, including ideas on how to effectively simplify the process of water quality management planning that meet both federal

and state requirements, and the costs and benefits of the alternatives stated in this notice or other alternatives. A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations.

### Participatory Approach\*

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Board is using the participatory approach to develop the TMDL proposal. The Board has formed an ad hoc advisory group to provide input regarding the proposed TMDL regulation and the proposal to repeal the existing WQMPs. The ad hoc advisory group is composed of representatives from state, federal and local agencies, environmental groups, manufacturing and industrial facilities and the academic community. Anyone interested in joining the existing advisory group should submit a request for the Board's consideration during the Notice of Intended Regulatory Action comment period.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The Board has considered the impact of this proposal on family formation, stability and autonomy. The repeal of the existing 18 water quality management plans will have an indirect positive impact on families in that water quality would still be maintained but with less expenditure of the public's and government's resources. The regulatory components of the existing plans are already being implemented through the VPDES permit program. Other nonregulatory components of the plans will continue to be implemented by the Board and the Department of Conservation and Recreation.

The VPDES permit program and the water quality management planning program help improve the quality of the waters of the Commonwealth resulting in better quality of life for the families through cleaner water for drinking, swimming, fishing and other recreation. Public participation during the adoption and repeal process will give families the opportunity to learn how the Board plans for and manages the state water resources for the benefit of all citizens.

The TMDL process will give people new opportunities to not only be educated but also to participate in determining how to improve water quality.